

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**BRANDT:** And thank you for having me. The pages are passing out the amendment which replaces the bill. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Brandt, T-o-m B-r-a-n-d-t. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties. Today, I'm introducing LB543 LB543 would adopt the Agricultural Equipment Right to Repair Act, known as Right to Repair. It is the term used by customers, in this case farmers and independent mechanics, about having access to the tools they need in order to be able to repair equipment they already own, such as tractors, combines, center-pivots, robotic milking machines, livestock building controllers, telemetry systems used for guidance, and the list goes on. As we've seen with automobiles over time, ag equipment has become an elaborate web of software and sensors. While some of this software has increased the efficiency of some task, it has also allowed manufacturers to take increasing control of the repair process by restricting access to authorized dealers. Unlike the automotive industry that allows right to repair for owners and independent mechanics, LB543 only deals with agriculture equipment, not other machines that have been in other right to repair legislation. In a typical right to repair scenario, an electronic sensor notices an error and puts the machine into limp mode. The machine moves slowly but does not fully operate. When the problem is diagnosed and repaired, the error code is cleared and the machine can go back to working normally. This is what legislation like LB543 is meant to address by allowing the owner access to machine software to bring the machine back to the manufacturer's specifications. Serious repairs can still be fixed by licensed dealers. A simple fix today can start with a cost in the hundreds of dollars, but will quickly escalate to thousands of dollars after multiple farm visits by a dealership mechanic. When breakdowns happen during the narrow window of planting or harvest, they have a detrimental effect on the ag operation. Dealership mechanics can be swamped with work, and it can sometimes take days to make it out to the farm for what in many situations is a simple repair that could be performed by the customer, while precious time is lost. Original equipment manufacturers known as OEMs say the farmers have always had access to the tools they need to repair equipment and that right to repair bills would open up trade secrets and proprietary information.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

LB543 would not allow that to happen. Three years ago, OEMs said that by January 2021 farmers would have access to everything they need for equipment repairs. OEM staved off right to repair legislation around the country by promising to deliver access. And here we are three years later and the farmers are still struggling to get the tools promised in the agreement. U.S. Public Interest Research Group, PIRG, recently published a report on Right to Repair that claims dealers and manufacturers have not held up their end of the bargain; and that it is still extremely difficult, if not impossible, for farmers to get diagnostic software tools or parts from dealers, as was promised. One example from the report is that a combine, which has 125 different computer sensors, if those sensors start showing an error code, the combine will not run, stopping harvest because the farmer does not have immediate access to the tools they need to fix the problem. Some farmers desperate for a solution have resorted to using software and tools of questionable origin to diagnose and repair their equipment. Others are buying 40-year-old tractors because they're more repairable than newer models loaded with software. This is getting ridiculous. I filed amendment AM284, which I passed out. This replaces LB543. We listened to the dealers and manufacturers to address their concerns, including removing language dealing with warranties, defining the term "fair and reasonable," clarifying what repair does not-- does not mean modify, and removing language allowing access to security locks. While working to address their concerns, there are still those manufacturers that will be against any right to repair legislation no matter what, and are using fearmongering about what LB543 does and does not do. Let me set the record straight. Number one, they say special interest groups that are behind this bill only want to be allowed to gain access to steal valuable source code. LB543 specifically disclaims any interest in source code. The only software requirement is the ability to restore existing embedded software back to its original state. Restoration is impossible without this access. Number two, they say farmers will use repair documentation to illegally tamper with emissions. The environment will be harmed and dealers will not be able to sell used equipment easily. Tampering with-- with emissions is not allowed in repair as defined in LB543. Tampering has been going on for years without access to repair materials and emissions tampering is illegal under federal law. It is not made legal by this bill. Number three,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

they say farmers will get injured repairing their own equipment. Not so. With the same tool-- tools and diagnostics is available to the dealership, farmers will be able to complete repairs the same as dealership technicians. It's insulting to farmers to say that it is unsafe for them to repair a piece of machinery they are familiar with, having owned it for years. Refusal to provide essential diagnostics only increases the incentive to find alternatives, possibly illegal. Number four, they say manufacturers already allow farmers to fix their own equipment and have for years. If this is true, why has right to repair legislation been filed in 21 states? The majority of these bills include farm equipment because farmers are exasperated. These bills would not be filed if farmers were not asking for help. If the tools already existed for repairs, farmer owners would already be using them and we would not be here today. LB543 is narrowly tailored, commonsense legislation meant to address repairs that farmers can do themselves and will save our farmers time and money and break the monopoly that manufacturers have over repairs. Right to repair is the very spirit of rural Nebraska. If you grew up or work on a farm or ranch, you're by your very nature an innovator. If it breaks, it is on you to fix it. LB543 has the necessary machinery Nebraskans require to fix the growing problem of repair isolation to solve problems on the farm in a timely manner. As a fourth generation Nebraska farmer, I would ask if the committee has any questions.

**LATHROP:** Senator Geist.

**GEIST:** You spoke just a second ago, you read my mind, about other states. You said 21 have filed--

**BRANDT:** Um-hum.

**GEIST:** --a bill similar to this. Have any been successful to date?

**BRANDT:** I don't-- I don't have that information per se. Anecdotally, I heard Vermont came out. I know Florida's is going forward. I know Montana is making a push. But outside of that, I can't tell you specifically. Maybe one of the later testifiers can answer that.

**GEIST:** OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**BRANDT:** We'll try and get that information to you.

**GEIST:** Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. Thank you, Senator Brandt, for bringing this bill. If I'm a-- a seller of the original equipment, do I have to always be a parts seller then, too? Am I required to sell parts? What if I just want to sell the original equipment but I don't want to sell parts?

**BRANDT:** I'm sure that's your option. And I'm sure some of the opponents to this bill will represent the original equipment manufacturers. They could probably answer that better, but I don't know of any obligation to have to support the equipment.

**DeBOER:** OK. And then if they do sell parts or if there is someone who does sell parts, are they required, like what happens if I'm just out of a part? Is that a problem or-- or I don't have a-- I can't support a certain kind of computer program diagnostic tool or something just because I just don't happen to deal in that area. What happens to me then?

**BRANDT:** In the bill, it says if-- if they no longer support that piece of equipment, then they're exempt. But if they-- if they do support the piece of equipment, those tools need to be made available to the owner.

**DeBOER:** What does it mean "support the equipment"? Like if-- if I just sell John Deere and there's Caterpillar, who I came up with another brand, has a similar kind of thing but I'm a John Deere dealer and I don't sell the Caterpillar and somebody comes in and I repair John Deere, am I required to then repair--give them-- OK.

**BRANDT:** No, you just-- you just have to support what you sell.

**DeBOER:** OK, that's what I wanted to know. OK, thanks.

**BRANDT:** Yep.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19  
Response protocol

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And thank you, Senator Brandt, for being here and for carrying the torch on this bill. So just to clarify your statement, so equipment that they support, if a piece of equipment has been taken out of specs through a farmer repairing it, shutting off the environmental stoppers, that sort of thing, would they still be required to repair that piece of equipment, even though it's out of environmental regulations or whatever standards  
[INAUDIBLE]

**BRANDT:** And this is-- this is a big discussion on this bill, because what happens today is called chipping.

**SLAMA:** Um-hum.

**BRANDT:** And so as an owner, a farmer may work with a third party to increase horsepower on a tractor. That takes it out of manufacturer's specifications.

**SLAMA:** Um-hum.

**BRANDT:** And so if that souped-up tractor would come into the dealership, it's a safety concern for that dealership. And I hear stories of this all the time that maybe have 100 horse tractor, it's put out 150 horse, this thing could blow apart.

**SLAMA:** Um-hum.

**BRANDT:** What we're talking about here is-- is not about those illegal situations and particularly with exhaust. What we're talking about here is the 95 percent of the owners that want to repair their own equipment that they purchase. And what's fairly new phenomenon in farm equipment the last 20 years is all the electronics on the farm equipment.

**SLAMA:** Um-hum.

**BRANDT:** And I can tell you as a farmer, I'm overjoyed when I snap a piece of steel because I can get that off the shelf. I can fix that. But when I've got code problems, that's another story.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**SLAMA:** Yeah. And when it comes to LB543, do we specifically exclude those 5 percent that are souping up their tractors or getting around the specs?

**BRANDT:** You know, if it's an illegal operation, this bill does not condone that. You know, that's going to be up to the dealerships to handle on an individual basis.

**SLAMA:** OK, thank you.

**BRANDT:** Yep.

**LATHROP:** I do not see any other questions for you, Senator Brandt. I am confident you'll be around to close.

**BRANDT:** All right.

**LATHROP:** We will take proponent testimony at this time. Wendy, I'll be right back.

**DeBOER:** Go ahead.

**LANCE ATWATER:** OK. Good morning, Judiciary Committee. My name is Lance Attwater, L-a-n-c-e A-t-w-a-t-e-r. I'm a farmer from Ayr, Nebraska, and I also serve on the Nebraska Farm Bureau Board of Directors. I'm here today in support of LB543 and the amendment on behalf of seven agriculture organizations, including Nebraska Farm Bureau, the Nebraska State Dairy Association, Nebraska Corn Growers Association, Nebraska Pork Producers, Nebraska Cattlemen, Nebraska Soybean Association, and the Nebraska Wheat Growers Association. LB543 addresses an ongoing issue of concern to farmers, whereby farm equipment manufacturers have maintained exclusive control over equipment, information and technology, in turn limiting farmers' and ranchers' ability to purchase information and tools necessary to repair their own equipment or turn to an independent third-party service technician. Production agriculture is a machinery-intense, time-sensitive business subject to Mother Nature and the needs of livestock. Equipment must work when livestock need fed and crops are ready to be harvested. Timely and cost-effective repair is vital to our members. LB543 offers a solution to this longstanding concern. However, it is important this committee know that Nebraska Farm Bureau

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

has been and continues to be engaged in deliberations at the state and national levels with farm equipment manufacturers about addressing the right to repair issue through a private memorandum of understanding similar to the automobile industry. Due to these memorandums of understanding, vehicle owners and independent technicians can purchase information, diagnose equipment and parts needed to repair vehicles. Agriculture producers do have a great appreciation for the role that manufacturers and their local dealers play in our business and our rural communities. They're an important partner to us. With that in mind, our members feel strongly about having the same flexibility in farm equipment repair that's available in the automobile industry. Nebraska Farm Bureau and the other organizations I am representing today believe a private solution through a memorandum of understanding is better for all parties. However, such an agreement would need to be resolved before we would step away from LB543. Our members want to be able to do the same things for their own equipment that farm technicians can do to our equipment when we go to a dealer. We are not seeking the right to modify farm equipment, only to repair it. Furthermore, we are not interested in the broader right to repair discussions surrounding off-road vehicles and consumer electronics. In closing, I would reiterate that unless an agreement can be reached with the equipment manufacturers at the national level, LB543 is a solution we intend to pursue. We encourage the committee to support and advance the amended version of LB543 to General File to continue these important conversations. Thank you. And I'd be happy to take any questions regarding this or how this bill could impact my family operation.

**LATHROP:** OK. Any questions? Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you very much for being here today, Mr. Atwater. I wanted you to provide a little bit more insight. So these groups would support a private memorandum similar to what the automobile industry, because this has come up before, specifically with the automobile industry and a private memorandum was established then. How would that directly relate to this issue and our farmers with like specific examples of how it would impact them through a private memorandum rather than LB543?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**LANCE ATWATER:** Well, so right now with-- so to go to the automobile industry, you can basically take your car if you need work on, you can basically go right down to your local mechanic instead of having to go to the dealership. So you have a Ford pickup, you know, you don't necessarily have to go to the Ford dealership to get that vehicle repaired. You can go to your local automobile, like I said, technician right down the street maybe. So with this in mind, with farmers right now, with our limited ability to be able to repair, diagnose our equipment, you pretty much have to go to, if you own John Deere or Case equipment, you've got to go to that dealership to have that repaired because of the technologies we have today. And so this memorandum is, again, similar to the automobile industry. But I'd also go back to what Senator Brandt said earlier. There was an agreement to try to have something in writing by January 2021. Unfortunately, we didn't get that met. And I think both sides could probably point the finger at each other on it. We know there's been a lot going on the last couple of years, but at that same point, it was January 2021. Everyone was aware that if we weren't going to be able to get to something, that we were going to pursue the legislative route. And I do say that what is in this bill and what's in the amendment that Senator Brandt has, really there's-- I don't see why the equipment manufacturers and dealers would be-- should be alarmed by what's in there, because basically this is what they'd put in a memorandum, if we could get that memorandum agreed to.

**SLAMA:** Thank you.

**LATHROP:** OK, thanks for your testimony.

**LANCE ATWATER:** Thank you.

**LATHROP:** Good morning.

**TOM SCHWARZ:** Good morning. Senators, my name is Tom Schwarz, T-o-m S-c-h-w-a-r-z, and I'm a farmer from Bertrand, Nebraska. As a 60-year-old farmer, I've witnessed many changes in agricultural equipment repair. When I was young, my grandfather and father could deal with almost any repair that we needed. Over time, equipment became more complex and we turned to local dealerships and mechanic shops for more complex issues. I'm one of the lucky farmers in that I



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

have an outstanding dealer within 25 miles of my operation. Many farmers and ranchers don't have that luxury, and mechanics may drive many hours to get to their places. We work in an unforgiving industry where weather rules our lives. A crop that's ready to harvest today may not be there tomorrow. Farmers and ranchers need the ability to have local mechanics help them with their equipment repairs. They need access to repair diagnostics and the ability to put used parts on machines and get the tractor or combine to accept them. Telling a small farmer that the company will give you access to this support, but it will cost \$8,000 a year really wouldn't help. It has to be affordable. Farmers don't need this so that they can bypass emissions or change the power settings on equipment. They just need to be able to repair it. I will freely acknowledge that if someone were to use these aids to make changes to the emission or power systems, the liability should lie with the farmer or rancher, not the original equipment manufacturer. Farmers have been taking responsibility for their repairs for years, and I don't see that changing. Manufacturers have essentially developed an unregulated monopoly on repair. I feel we can all agree that unregulated monopolies can be a bad thing. We in Nebraska don't let railroads or natural gas companies do whatever they want and charge whatever they want for their services. Why would we allow those things for equipment manufacturers? I don't even believe that it's in the best long-term interest of these equipment manufacturers to allow this to continue. A monopoly can be a great thing for a company in the short run. But over time, monopolies breed inefficiency for productivity and higher costs as there is no motivation to do a better job. When copyright laws didn't go the way they wanted, these companies developed an end user license agreement. This beauty essentially says that when you turn the key on in the equipment, you're agreeing to this contract, one that you may not have had the opportunity to read, let alone negotiate the terms to. In other words, if any of you were to come out to my farm and turn on a piece of my equipment, you agree to this end user license agreement. Problems like I've talked about are going to get worse until someone stops in or steps in and stops it. I'd like to thank Senator Brandt for bringing this bill. And with that, I'll wrap it up.

**LATHROP:** OK, let's see if there's any questions. Senator Geist.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19  
Response protocol

**GEIST:** I do. I-- and I will apologize for the elementary nature of my question. I'm not a farmer and don't pretend to be nor is anyone in my family. So if you-- now I understand if you change the-- the emissions and all of that, does that void a warranty?

**TOM SCHWARZ:** My understanding is, yes, that voids the warranty if you do that.

**GEIST:** OK, but these minor repairs that you're looking to be able to perform, would those void a warranty?

**TOM SCHWARZ:** No, because what I'm talking about here and I'm just going to give you an example, it may not be a perfect example, but let's say I've got a component on the tractor. Say the power takeoff which allows us to move power from the engine back to a machine that's behind the tractor, if the PTO goes out, I can buy a used PTO and put it in the tractor, but the tractor has to accept that new component.

**GEIST:** OK.

**TOM SCHWARZ:** It's got to be told, you know--

**GEIST:** It's compat.

**TOM SCHWARZ:** --it's OK, this thing's-- yeah, it's compat. It's going to run. And that's got to be done through a computer program.

**GEIST:** OK. OK, thank you.

**TOM SCHWARZ:** Um-hum.

**LATHROP:** Senator DeBoer.

**DeBOER:** Couldn't resist asking a question of a farmer from Bertrand, which is where my mom's family's from so. You said when copyright laws don't-- didn't go the way they want it, can you tell me-- I'm-- I'm not familiar with that. What happened with that?

**TOM SCHWARZ:** There was a-- a large disagreement or agreement, well, it's ultimately over who holds rights to-- to intellectual property. Now, this was actually generated by the movie industry and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

entertainment industry in a big way. And ultimately then equipment companies came into it as well. So that, you know, who-- who owns intellectual property and how long does it last? And essentially what happened was that was thrown into the Library of Congress, which seemed odd to me at the time. But I guess that's-- that's where it is. And the Library of Congress then ultimately said, OK, you know, farmers, you do have a right to repair your equipment. That shouldn't be taken away from you just because these people own this intellectual property. Well, the companies, of course, don't like that. They like their monopoly that they have and they want to see to it that it continues. And so one of the things that was brought out was an end user license agreement. I should have-- I should have, I apologize, I should have brought a copy. It's not really all that long of a piece, but what it does essentially says if you turn the key on this machine,--

**DeBOER:** And you agree.

**TOM SCHWARZ:** --whether it's a combine, tractor, or whatever, you're agreeing to the terms of this. And again, literally, you could come to my farm. And if I had you take that off of the tractor, when you turn the key on, supposedly you're under the--

**DeBOER:** I appreciate that. I didn't realize that the-- that they had extended that to the-- the equipment manufacturers. Thank you.

**LATHROP:** OK, thank you for being here today, appreciate hearing from you.

**TOM SCHWARZ:** Thank you.

**LATHROP:** Next testifier. Good morning. Welcome.

**JACOB BISH:** Good morning, Senators. Thank you for your time today. My name is Jacob Bish, J-a-c-o-b B- as in boy-i-s-h, of Giltner, Nebraska. I'm a third generation family business owner. We manufacture agricultural equipment, Bish Enterprises in Giltner, Nebraska. And I came to this hearing today to support LB543 to adopt the Agricultural Equipment Right-to-Repair Act. Four years ago, Senator Brasch introduced similar legislation to the state and was laughed out of the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

committee hearing with the quip, better luck next time. Two years ago, the Nebraska Farm Bureau was drafting legislation, but this legislation was killed by Bruce Rieker, who believes that the best solution isn't legislative or regulatory. It's parties working things out. While I support Mr. Rieker's magnanim-- magnanimity of the situation, it's time to stop being disingenuous. In late 2018, John Deere and other manufacturers did promise to provide these tools by January 1, 2021, and they have not held up their end of this bargain. Today, the Nebraska Farm Bureau supports the right to repair. Nebraska farmers support the right to repair. Small businesses support the right to repair. And Nebraska citizens, your constituents, support the right to repair. Today is the time to take genuine action to support our farmers, not tomorrow, not next year, not better luck next time. We must support our farmers, we must support the integrity of our nation's food security, and we must support the right to repair. Today, 21 states are debating some form of right to repair legislation. Nineteen-- 21 states have groups working to protect consumer rights, from consumer electronics to specialized equipment such as agricultural machines and medical equipment. John Deere, Apple, General Motors and many companies are working hard in those states to suppress our consumer rights. Nebraska needs to be the state to stand up and support our farmers' right to repair agricultural equipment. Thank you again for your time today. I support LB543 to adopt the Agricultural Equipment Right-to-Repair Act.

**LATHROP:** All right. Senator Slama.

**SLAMA:** Thank you very much, Mr. Chairman, and thank you very much, Mr. Bish, for being here today. Just to clarify on the numbers, I think this was raised as a question earlier. So 21-odd states have introduced this kind of legislation. Have we seen any states where it's passed?

**JACOB BISH:** The only state I know of is Massachusetts, specifically in the automotive industry. I do not know of any states that passed agricultural or consumer electronics right to repair.

**SLAMA:** OK, thank you.

**LATHROP:** OK, thank you for being here.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**JACOB BISH:** Yes. Thank you for your time.

**LATHROP:** Next testifier. Welcome back.

**ANDREW BISH:** Yes, thank you. Good morning, Senators. Thank you for your time today. My name is Andrew Bish of Giltner, Nebraska. I'm a third generation family business owner that manufactures agricultural equipment. And I came to this hearing to support LB543.

**LATHROP:** Better spell your last name for us.

**ANDREW BISH:** B as in Boy-i-s-h.

**LATHROP:** OK.

**ANDREW BISH:** Adopting right-to-repair legislation in the state of Nebraska is essential to support farmers and small agricultural companies like Bish Enterprises that have operated in the state since 1976. To provide some perspective, my grandfather, Harv Bish, founded our business in 1976, creating a business modifying components on a John Deere header to fit a John Deere combine because farmers needed a solution to a problem that the big manufacturers were not resolving and only asking their customer to purchase newer and more expensive equipment, not better equipment, mind you, just newer and more expensive. My father, Brian Bish, continued in his path and took over the business about 20 years ago. Today I operate the business day to day and collectively we have over 120 different combine, combine header combinations that make it possible for today's producers to save money when they need a new combine or a header. Our business benefits the farmers of the state and most states, frankly, and we never negatively impact the manufacturers. Header adapters we make so that farmers can operate their preferred equipment choices, even if that equipment is not produced by the same manufacturer. We work with companies like Headsight Indiana to allow these different devices to communicate electronically despite being wired on two separate systems. Farmers do this because it is often more economical and less wasteful than the cost of purchasing new equipment when it is not necessary. Large agricultural manufacturers such as John Deere attempt to control private property after the sale of the item by restricting access to the diagnostic and repair information of this equipment. The

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

restriction of data makes our job harder, and our partners' jobs more difficult, if not impossible, for them to perform, which ultimately means we cannot provide our customers with their preferred solutions. We cannot allow large agricultural manufacturers to control how farmers can produce crops and who is allowed to perform repairs. Without right-to-repair legislation, we would put our nation's food security into the hands of corporations and boardrooms. We must trust our farmers. We must trust-- we must support the right-to-repair legislation and make it illegal for large agricultural manufacturers to restrict diagnostic and repair information and tools. I've come today to the Capitol to support LB543 because I support Nebraska's farmers. I support Nebraska small businesses. And this legislation is needed for my business to support our customers and to employ our team. Thank you again for your time today, Senators.

**LATHROP:** I don't see any questions for you. Thanks for being here, Mr. Bish.

**ANDREW BISH:** Thank you all.

**LATHROP:** Good morning and welcome.

**WILLIE CADE:** Good morning. Thank you, Chairman. My name is Willie Cade, C-a-d-e. And thank you, rest of the committee, for the time today to allow me to testify. I'm a member of the Nebraska Farm Bureau and a board member of Repair.org, an international organization on right to repair. I'll keep my remarks brief. I'm also the grandson of Theo Brown, who was board member of John Deere for 30 years and headed the Research and Develop-- Development Department of Deere. During his lifetime, my grandfather earned 155 patents. One of his earliest patents involved the manure spreader. Some people think it went genetic. I have three concepts that I want to provide today. One, parties agree that farmers should be able to fix their own equipment. Two, now is the time to move on LB543. And three, we need your help to make this happen. Senator Brandt's statement of intent for this legislation "would allow farmers to fix their own machinery" is quite right and necessary I believe. The Association of Equipment Manufacturers and the Equipment Dealers Association also agree, as evidenced by their statement of principles posted on the Internet, where they say AEM and EDA reiterated their joint commitment to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

provide end users with the information and tools needed to maintain, diagnose, and repair their equipment from the-- from 2018, over two years ago. And this printout here of their principles on the back of my testimony. That same statement said that January 1 was the date. We have waited and they're still not provided the information. We're still waiting. In 2012, Massachusetts passed the right-to-repair legislation for automobiles. Only after that legislation was passed did the automobile manufacturers agree to a national plan to implement right to repair for automobiles, only after that legislation was passed. Please help us get a binding agreement with AEM and EDA. As opponents to this legislation present their side, please don't believe their sound and fury. In short, parties agree the time is now and we need your help. Thank you.

**LATHROP:** OK. Any questions for Mr. Cade? I do not see any. We have--

**WILLIE CADE:** Just one piece. There's 21 states who have legislation, 33 bills. Four of them are ag only.

**LATHROP:** Oh.

**WILLIE CADE:** That are currently--

**LATHROP:** A lot of them deal with autos and electronics then.

**WILLIE CADE:** A lot of them are general, yes.

**LATHROP:** OK, very good, appreciate that information too. All right. Next proponent. I appreciate two things: that we're doing this in an orderly way, and you guys have figured out how to do this. That doesn't always happen. And that you're observing the masks and we appreciate that courtesy as well. Good morning.

**JERRAD STROH:** Good morning. My name is Jerrad Stroh, J-e-r-r-a-d S-t-r-o-h, and I'm a farmer from Juniata, Nebraska, which is just west of Hastings. So my testimony is in favor of LB543. And it's probably more anecdotal because a lot of the things that the previous gentlemen have talked about, I've lived. So yeah, I simply want to have access to all the diagnostic features of the equipment to be able to-- to perform repairs in a timely manner. Farmers are inherently independent. And maybe I'm on the extreme end of that because after I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

graduated from engineering school, I came home to farm. And I-- that's-- that's the part that I enjoy is modifying and improving and adapting equipment to my-- serve my purposes. But when something goes wrong and you have to wait on a technician to come out and diagnose your equipment for you when it's something-- something simple, many times they've plugged in the-- the equipment diagnostic terminal and said, well, your fuel filters are plugged. Well, gosh, I could have fixed that on my own. So I've-- I've often wanted to have that ability. Like with an automobile, you can go to the parts store and buy an \$80 code reader and, you know, find out specifically, you know, down to what cylinder is misfiring. So I want that-- that detailed information when something goes wrong with my equipment. You know, during-- during the compressed seasons, there's not enough technicians to go around. And sometimes you're on a waiting list because of that. And I've often said with the cost of new machines these days, maybe that EDT ought to be included in that package. I wouldn't think it would be that much more expense and then to have the software updated to-- to be able to-- to do the diagnostics. Personally, I'm not looking to alter the performance of the equipment in any way, horsepower or emissions-wise. Like was mentioned earlier, third-party vendors are already doing that if somebody wants to have that done. So, yeah, I would like to be able to install-- there's also software updates on equipment. I'd like to be able to install those myself too. You know, our technicians are great. They're good guys. I value their opinion. But if I can take a little bit of the load off them and do that myself and save myself the expense, that would be a great deal. So I support LB543.

**LATHROP:** OK. Can I ask you a question?

**JERRAD STROH:** Sure.

**LATHROP:** If you-- if you're-- let's use your clogged fuel filter, for example. You're driving your combine, you know, you have a window of time to get all the harvest done. Combine goes down. You call a service tech right now. Walk me through what you're paying. So are they charging you mileage to come out?

**JERRAD STROH:** Yes.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

And some kind of [INAUDIBLE]

I believe there's a minimum fee and it varies from dealership to dealership. And pretty standard is \$180 just to walk out the door and come to your farm.

**LATHROP:** OK.

**JERRAD STROH:** And then there's mileage on top of that. So-- and then there's a trip back, too, so.

**LATHROP:** Do they charge you to plug in the monitor that reads the code that tells you the fuel filters [INAUDIBLE]

**JERRAD STROH:** I believe once they get there, it's-- it's-- that's not an extra fee. It's under the hourly service charge, which is probably \$130 an hour, \$120 an hour to do that.

**LATHROP:** OK.

**JERRAD STROH:** But what happens is you-- the machine will-- will give you a warning code. And a lot of times you can go look up that warning code in the owner's manual and it says, call your dealer. And then they plug in the EDT and say, well, low fuel rail pressure. You know, that-- that's something that could have--

**LATHROP:** You could buy the part and put it in yourself.

**JERRAD STROH:** Right or if they're on the shelf at home and I could just go get it and put it in.

**LATHROP:** Is this-- I'm a little surprised that this doesn't show up on your dashboard like--

**JERRAD STROH:** It does.

**LATHROP:** Does it say your fuel filters out or it just says like my car, check engine.

**JERRAD STROH:** It has check engine light and then normally a code will come up. And then you have to go to that code list. And it seems like

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

the code lists are getting more and more diluted. And so they're not even giving you the most basic information for, you know--

**LATHROP:** But you can't find that online. If you have a John Deere, you can't go to their website [INAUDIBLE]

**JERRAD STROH:** Possibly if you go to like an Ag Talk website that somebody has experienced it before, you can put it out there. But that takes time to-- to find too.

**LATHROP:** Search.

**JERRAD STROH:** Yeah.

**LATHROP:** OK, well, thanks for answering that question. I don't see any others. Thanks for being here this morning.

**JERRAD STROH:** Thank you.

**LATHROP:** Next proponent. We're going to have time for probably two more proponents and then we'll go to opponent testimony.

**KEVIN KENNEY:** Thank you, Senator.

**LATHROP:** Welcome.

**KEVIN KENNEY:** Senator Brandt, thank you for introducing the bill. My testimony has evolved just in the last half hour just listening to everybody.

**LATHROP:** Let's have you give us your name and spell it.

**KEVIN KENNEY:** OK. My name is Kevin Kenney.

**LATHROP:** Could you spell your last name, Kevin?

**KEVIN KENNEY:** K-e-n-n-e-y.

**LATHROP:** Very good. Go ahead.

**KEVIN KENNEY:** So my testimony's evolved. I don't want to repeat myself. I value the questions that were answered or asked and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

answered, and I'm going to bring up some highlights of what got us here and what I see as a solution. My background is I graduated from UNL ag engineering and I worked probably 10,000 hours in the last 10 years on equipment systems on precision ag, and right to repair. So ask me the hard questions, whatever, however you guys are interested. The-- the thing that I want you to point to is the spirit of the American farmer. I had a farmer send me a text this morning and he wanted me to read it. His name's [INAUDIBLE]. He's a West Point Academy appointee, Army. Now he's a farmer. So he said a quick Google search says 92 percent of Nebraska is utilized for agriculture. One in four jobs are ag related. Cash receipts for marketing contribute \$21 billion. I guess agriculture is important. And that's why I think that the senators should take time to look at this bill and he's for it. So-- and a lot of things we do in life, it's kind of like playing hockey, like you're Wayne Gretzky. It's not where the hockey puck is. He was successful. He skated to where the hockey puck was going to be. And part of-- the two issues I have the biggest problem with is that the AEM and EDA have put in papers that they don't like people messing with emission systems. The last I talked, [INAUDIBLE] dealers, the people that have testified the prior two hearings don't have a patent on emissions systems. I do. The second thing is that they've accused right-to-repair advocates of wanting to go out and hack source code. My emails that I sent you this morning are complicated, but a lot of you folks are lawyers. Please double-check everything. I want especially the AEM and EDA to read this. We have open source software running tractors from Windows CE 2003, Bill Gates knew it was junk so he threw it in the ditch in 2005 and made it open source and they banned it in 2013. Our equipment systems in agriculture have not had a safety or security update in eight years and that's what they're accusing us of stealing. Hell, I wouldn't take it if it was given to me. You follow me? We need to wake up. This is a security breach, number one. Your computers at home wouldn't have something like that. If you've got Windows 10, you're getting updated every other time Windows wants to update it. Linux is updated. Your cell phones, they're all updated. We have rolling hot spots with tractors vulnerable to a cyberattack. And they accuse us of wanting this software to hack, to manipulate. So with that, I want to answer a couple of quick questions. Senator Slama said chipping, she was concerned about that. I am too. This isn't about chipping, but that is

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

legal. The Copyright Office ruled farmers have the right on farm innovation to change anything they like and they could hire third parties to do it. And that was a letter from the Library of Congress. Senator DeBoer, she wanted to know about U.S. copyright concerns, modifying a combine by third parties, extended use license agreement. OK, this is about the software that-- that is called apps. The operating software, which I just explained, has to be run by the operating [INAUDIBLE] public source. That's free software that these companies didn't even pay for. That's a real huge point to remember. We want access to the code so we can put our own stuff on these tractors and come up with our own products.

**LATHROP:** Mr. Kenney, we got one more person that's waiting.

**KEVIN KENNEY:** You bet. Any questions?

**LATHROP:** And we're trying to do this 30-minute thing, but we very much appreciate your expertise and being here today.

**KEVIN KENNEY:** Yep. Thank you.

**LATHROP:** Thank you. Welcome.

**VERN JANTZEN:** Good morning, Mr. Chairman, members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I operate a farm outside of Plymouth in northeast Jefferson County. I also serve as the vice president of the Nebraska Farmers Union. Our president, John Hansen, is not able to testify today in person. So he asked me to come out of hibernation and offer my testimony as a representenat-- representative of our organization. The subject covered by this bill as amended has been the subject of concern during policy debates during our annual state conventions for many years. And we have an item in our policy handbook that supports the fair repair and right-to-repair legislation that would allow farmers and independent mechanics access to diagnostic software, information, and other tools in order to repair modern equipment. The farm equipment that you can purchase today is often a complex piece of machinery that will contain more than one computer, along with software monitors and sensors to allow the equipment to be operated in the most efficient manner possible. This is a marvel of engineering until something goes wrong

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

and the operator needs to figure out what is wrong. Many times there will be a code displayed to indicate what the problem is. But without a manual or diagnostic tools, the code-- code will mean nothing to the operator. A call will need to be made to the equipment dealer for assistance. Over the years, equipment dealerships have consolidated and often there's only one dealer for the entire county. Depending on your location, you will wait until a mechanic is available to come and you will not only pay for the time he works on your broken machine, you will also pay for his time and travel to your location and back to the dealership. Most farmers will tell you that downtime-- most farmers will tell you that downtime is money lost during planting and harvesting operations. This legislation provides the equipment operator or a local mechanic the ability to obtain the tools necessary to diagnose a problem and then repair can be made or more expertise can be called in. There are many farmers that are comfortable trying to diagnose equipment problems. If they have the proper tools or they have a neighbor or a local mechanic that would be able to fix a problem if they have the tools to figure out what is wrong. This legislation deals with the right to repair and not to modify, and that is an important distinction. The automotive industry has had to deal with this issue and agreements have been reached to allow nondealer mechanics to obtain the tools to diagnose and repair recent models of cars and pickups. I like the option to support my local repair shop with my business. One of the underlying issues that this legislation is attempting to address is what are your rights and your choices when you need to repair a piece of equipment? When you buy a piece of equipment, how much of this machine do you really own and control? Most of the manufacturers of farm equipment will inform you that all of the technology in your equipment is proprietary and they or their representatives are the only ones allowed to deal with the problem that occur. Is this interpretation acceptable or does this give the manufacturer too much control over how and when you use your equipment and the data that it can generate? I think this legislation is a good compromise and I would encourage the members of this committee to move this bill as amended to the floor of the Legislature for discussion. Thank you.

**LATHROP:** All right. Well, thanks for being here and standing in for the president or the-- John Hansen.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**VERN JANTZEN:** You bet. Thank you.

**LATHROP:** All right. It's good to hear from Farmers Union. We will now take opponent testimony.

**GRANT SUHRE:** Good morning, Chairman Lathrop--

**LATHROP:** Good morning.

**GRANT SUHRE:** --and members of the Judiciary Committee. Thank you for the opportunity to present today in opposition of LB543. My name is Grant Suhre. It's G-r-a-n-t S as in Sam-u-h-r-e and I am the manager of customer support for the U.S. and Canada within John Deere. So my team takes care of the dealer channel across that market. And with that, I'd like to share that I take a lot of pride in our team's focus on supporting customers and ensuring that they get the uptime that they need. It's absolutely essential that a farmer gets their crop in and they get their crop out and they take care of their livestock as it's required. So I'm also very thankful that we have 63 John Deere ag dealer locations across Nebraska with over 1,450 employees. So there's a pretty significant population of Deere dealers here that support the customers as-- as best as they can. And you'll hear from one of those dealers here shortly. And first and foremost, we support customers' ability to repair their machines. We-- we certainly understand that uptime is critical to farming and ranching. And we also know this is a competitive industry. If we don't take care of our customers, there are other manufacturers and other repair suppliers that will-- will provide that service for them. So-- so we certainly want to be attentive to our customers' needs. The challenge comes when we talk about right to repair versus right to modify. And I think you've heard that on several occasions, comments about modifying equipment. And we certainly provide all the tools that are required. That's the handout here. This is the response to the industry commitment. We meet that commitment today. The tools that are on here are available. Senator Brandt and several other of his colleagues were at a demonstration at the AKRS dealer recently that allowed them to observe all these tools in use. And the key thing about modification and the reason we have one exemption to this is reprogramming is that we're required as a manufacturer to protect the emissions controls. We're liable to the EPA under the Clean Air Act to ensure that the emissions controls

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

remain functional and perform. We're currently under a degradation factor audit by the EPA and we have to go gather information off the machines with 8,000 hours on them, provide that to the EPA for their audit. And if we don't comply with their requirements, they can, up to and including stop us from building engines. So the-- the motto Nothing runs like a Deere becomes a bit of a moot point if there's no engine. And that's-- that's the things that are at stake, end use audits and degradation factor audits that are-- are enforceable under the Clean Air Act. OK? The other issue with-- with modification is safety. These precision ag machines are-- are self-steering. If you've been in a combine during harvest, you're riding along, the machine is adjusting itself and steering itself at the same time. If you have modifications that could affect those steering components as an example, that very large machinery could go places you don't want it to go. So-- so we take very seriously the safety of the operators and the safety of any bystanders around the equipment. That's the level of sophistication we're at today.

**LATHROP:** OK.

**GRANT SUHRE:** The other piece we have is reliability.

**LATHROP:** Hang on a second.

**GRANT SUHRE:** Yes, sir.

**LATHROP:** When that red light comes on.

**GRANT SUHRE:** Oh.

**LATHROP:** We've got to have you [INAUDIBLE]--

**GRANT SUHRE:** All right. So just to summarize, we-- we don't believe we need legislation to enable customers to repair their machines. We've already enabled that. And what we want to do is make sure that customers have good value from their machines and the follow-on customers and others are safe and get good use from the equipment and that we stay in compliance with existing law. Thank you.

**LATHROP:** OK. Senator McKinney.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**McKINNEY:** Thank you. Just I think a couple of questions. To be clear, if you sell a combine to somebody and they have it on their farm and they-- and they modify it, John Deere could still be held liable if something they modify is not within EPA-- EPA regulations?

**GRANT SUHRE:** So let me make sure I understand the question. If a customer modifies the machine,--

**McKINNEY:** Right.

**GRANT SUHRE:** --is the customer liable or is John Deere?

**McKINNEY:** Yes.

**GRANT SUHRE:** Ultimately, it depends whether you could prove who modified the machine. And if you change the software, it's often not even visible and detectable that it's been modified. So-- so you'd have to go through some forensic analysis to understand it's been modified by somebody other than, you know, the original equipment spec-- beyond the original equipment spec.

**McKINNEY:** Are there currently situations where someone modify-- modifies something and it's not detected who did it and you've been held liable because of that?

**GRANT SUHRE:** I'm aware of some unintended motion lawsuits that are underway in states other than Nebraska currently. And that-- that's-- that's one of the issues [INAUDIBLE].

**McKINNEY:** OK, because I don't know, I just always thought if somebody bought something and they owned it, they had the right to do whatever they want-- wanted to it. I was just-- I'm not familiar with farming like that out here, live in Omaha. So I was just curious about it. Thank you.

**GRANT SUHRE:** One-- one thing that's interesting is farming equipment is much more sophisticated. Think of it more like an aircraft than a car. The multiple functions that are controlled: hydraulic systems, steering systems, that's all highly automated today to ensure we have high productivity in the field and ensure that the producers get the highest yield from their crops, things like that.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**McKINNEY:** Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. Thank you for being here, Mr. Suhre.

**GRANT SUHRE:** Suhre.

**DeBOER:** Suhre. So why not just give them, the farmers, a list of your codes? They're complaining that they get these codes, code 39, whatever. They don't know what the code means. They have the part at, you know, in their barn. They could just put it in. Why not give them those codes?

**GRANT SUHRE:** So we do. We make access to those through the displays on the-- on the complex equipment. And then if they look in the operator's manual and many of them that are relevant to [INAUDIBLE] time issues are already there. And if-- if they want to go beyond that, they can order the manual for the machine, the technical manual for the machine that has all of them, including the descriptions. So-- so there-- there is varying levels of access, up to and including the same access that the dealer has.

**DeBOER:** Why not just give them that-- that when they buy the equipment? I imagine it's a very expensive piece of equipment, because I know you guys make good things. Why not just give them the-- the-- the whole code list? I think that would solve some of, I mean, it wouldn't solve all of this. Certainly not. But it would help them.

**GRANT SUHRE:** So that again, the sophisticated equipment with the displays, the access is already there. They can access it, including a brief description of what the code means, what it-- what-- what the intention is. The reality is, is on this equipment there can be, you know, in excess of 10,000 codes. That's-- that's the level of sophistication that exists in this equipment.

**DeBOER:** OK, so what--

**GRANT SUHRE:** They can access them today.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**DeBOER:** Can they do it online? I mean, could they if-- if they don't get enough information there, can they go online and put in this is my model, this is the code I'm getting?

**GRANT SUHRE:** In many times they can. They can go on to the John Deere App store. And there are various apps around that equipment that they can download and they can download, for instance, JDLink. And they can actually, excuse me, if their-- if their machine is connected, they can even see those codes remotely.

**DeBOER:** What does it mean, if their machine is connected, online?

**GRANT SUHRE:** So a lot of our production ag equipment have telematics on board called JDLink. And through the cell phone network, that machine will actually transmit the codes off board. And the operators can see that either through Operation Center, which is an app that they can use to manage their-- their farming operation, or they can look at the JDLink app and see what codes have been-- been fired [INAUDIBLE].

**DeBOER:** You said that in many instances. Tell me about the instances in which that isn't true, in which they cannot go and get that information.

**GRANT SUHRE:** Sorry, I missed that.

**DeBOER:** You said-- you said that in many instances they can go online and see those things or-- or they have access to them in some way. Tell me about the instances in which that isn't true. So you said in many instances there, that implies there's a reminder. What--

**GRANT SUHRE:** So-- so if you have a machine that's, say, more of a mid-level tracker that doesn't have the telematics gateway on it, the telematics access, you'd have to go to the machine and look at the display itself to see those codes.

**DeBOER:** So the-- so if I'm a farmer and I have a piece of your equipment, there will never be a time when a code comes up that I can't look up and find out what's wrong with my machine. Is that a true statement?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19  
Response protocol

**GRANT SUHRE:** There will never be a time that you won't be able to look it up if you have the right information. Not all of the codes will be in the operator's manual.

**DeBOER:** OK.

**GRANT SUHRE:** But you can certainly go on our Bookstore and get the manual that has all of those codes listed in that. Or you can get Customer Service ADVISOR, which would have all those codes on board as well, because that's an electronic repository of all of that technical information.

**DeBOER:** You heard the testimony earlier and that didn't seem to be what-- what's-- what the experience of your users, well, I don't know that they're necessarily John Deere users, but of-- of the users was. Is there-- is there a communication problem? What's-- what's going on there?

**GRANT SUHRE:** I-- I understand your perspective there. And I, too, am confused occasionally by that because we have this on Deere.com. You can go into our parts and services section on our website. And you can go to the Bookstore. You can go to the dealer. You can-- you can look at your operator's manual. You can go to the App Store on your-- on your phone and see the different options that are available for a operator to get information.

**DeBOER:** OK, thank you.

**LATHROP:** I see no other questions. Thanks for being here this morning.

**GRANT SUHRE:** Thank you, Chairman.

**LATHROP:** Next opponent. Welcome.

**TREVOR MECHAM:** Thank you. Good morning. Good morning, Senators. Good morning, Chairman. My name is Trevor Mecham, T-r-e-v-o-r, Mecham is M-e-c-h-a-m. I am the vice president of global technology and industry relations for Valmont Industries, representing Valley Irrigation. First off, thank you for the opportunity to be able to address my concerns regarding LB543, Agricultural Equipment Right-to-Repair Act. On behalf of Valmont Industries, then Valley Irrigation and the state

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

of Nebraska, I'd first off like to just say thank you all for your public service. As you are aware, the agricultural industry is thriving and it is a business that continues to be at the forefront, influencing many sectors of economy, both locally and internationally. With the growing population diminishing land available today to feed that population, it's important to understand the current development and industry and how it will affect our production and distribution of food. So as a third generation family farmer and longtime industry professional myself, my career over the past 22 years has spanned the continual changes and advancements in agriculture that we now benefit from today. This, specifically, the advancements in agricultural technology has transformed many areas of farming, including irrigation. Whether the perspective of a farmer, a participating dealer, or a original equipment manufacturer, I have had the distinguished honor opportunity to be on each side of the table. As you may know, water is the foundation of many agricultural crops in the U.S. and worldwide. What you may not know is that it also consumes approximately 80 percent of all the water used in the United States. However, as with many consumer technology trends, we have been able to leverage many benefits into our industry that conserve water and energy resources. This also includes automation of center-pivots and remote access to turn them on, to turn them off, control the flow of water, how much it needed, how much is being used and receive notifications and alerts as a grower when there are issues regarding the machine and even the crop itself. They're the reason why we invest so much time and money into our dealer network, ensuring the proper training and certification is met to achieve the highest standards necessary for proper functionality. Amidst the thousands of connections growers have, enabling them to control a variety of devices remotely, there are safeguards in place to help assure the necessary water efficiency and power management. Make no mistake, we advocate for the farmer and we do advocate for the appropriate right to repair as needed, just as I did and our family farm did, looked to serve and save on operational costs year over year. Still, there were inevitably certain things that were understood I could not repair myself without creating more potential risk. As I stated earlier, the evolution of technology is continuous innovation beyond just a familiar sprinkler irrigation will soon include hardware applications with artificial intelligence, knowing when, where, and how much to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

spray for pest and disease. Naturally, such applications require a higher level-- higher level of expertise to troubleshoot. Giving uncertified access to independent third parties who have not gone through proper certification and training could materially and negatively impact growers' attempts to produce greater year yields with greater operational efficiency. From a consumer perspective, I'd just like to say also Apple and Android application as an example that we use daily on our mobile devices, developers across the world must still achieve a certain level of accredited competency in order to be a part of that ecosystem. In the ag ecosystem, the same principles apply.

**LATHROP:** We're going to ask you to wrap up.

**TREVOR MECHAM:** That's fine.

**LATHROP:** All right. We appreciate hearing from Valmont.

**TREVOR MECHAM:** Yeah.

**LATHROP:** We just got to enforce that light.

**TREVOR MECHAM:** Sure.

**LATHROP:** Or we're going to have opponents that won't have an opportunity to be heard.

**TREVOR MECHAM:** OK.

**LATHROP:** All right, let's see if there's any questions for you. I don't see any. We appreciate you being here.

**TREVOR MECHAM:** OK.

**LATHROP:** We appreciate hearing from Valmont--

**TREVOR MECHAM:** All right. Thank you.

**LATHROP:** --on this important subject. Thanks, Mr. Mecham. Next opponent. Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**KEVIN CLARK:** Good morning. Thank you, Mr. Chairman and the committee, for allowing me to testify today in opposition to LB543. My name's Kevin Clark, spelled K-e-v-i-n, last name C-l-a-r-k. I'm the CEO and one of the owners of AKRS Equipment Solutions. We're a large, obviously agricultural dealer. We have 26 John Deere stores located through Nebraska. We employ about 700 people in the state, mostly, obviously in rural areas. We take a lot of great pride in our service and commitment to those communities and the service and provide to farmers. One of the things that we look at doing is making sure that we bring value to all of our customers and we do that through a significant amount of investment, both in time, resources, and training for our technicians. We spend hundreds of thousands of dollars a year making sure that our technicians are well trained, particularly through John Deere's training school. We also spend a lot of money making sure that we've got a tremendous amount of parts in stock. We literally have tens of thousands of SKUs or different parts in stock available for purchase by customers, independent repair shops. We also make sure that we've got a subscription service called John Deere Service ADVISOR that allows customers to be able to look up and diagnose equipment for anybody that wants to be able to do that, as well as making sure that the diagrams, diagnostics, schematics, and part numbers are available online and really available through our customer port. Well, while we support the ability for customers to repair their own equipment, we do not support the ability for them to be able to modify the equipment for either safety reasons and for emissions reasons as well. You often hear these-- these situations where there's generalizations about codes or long wait times for service. Again, we take great pride in being able to service our customers. We answer a phone 24/7. We're able to get out to customers in a very quick manner, even when they're long distances away. We try to make sure to get back to them certainly within 24 hours or faster at their farm location. You also hear about the chipping [INAUDIBLE] of tractors. That's one of the modifications that runs rampant in this industry. And one of the reasons that we oppose this legislation is that by allowing access and unfettered access to the software or firmware, it allows that situation for that to continue unabated, which creates those safety issues both for the farmers as well as for-- for our employees and technicians that work on the equipment. Literally with hundreds of different repair shops outside the John

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

Deere dealer network, there is ample ability to get equipment repaired throughout the state. This legislation really focuses on the ability to modify that equipment. And by having broad definitions around "fair and reasonable," it really opens that door for a scenario where you can have that unfettered access and modify equipment outside the original specifications. So with that, I thank everybody for allowing us to testify today and I'll open the floor to any questions you may have for me.

**LATHROP:** I got a question for you. So I listened to Senator Brandt's opening and I listened to the proponents and they say to a person, we don't want to modify our equipment. If we want to chip our equipment, we already know how to do that. There's somebody that'll sell them whatever they need to chip their equipment. They say we don't want to modify our equipment. The opponents are saying this will lead to modifications of the equipment. My question, because this seems to be-- it seems to be like these guys are asking for something and you're saying we don't want to give it to you because they'll do something with it they say they don't want to do. My question is, there appears in this controversy an agreement to reach an agreement by January 1 of this year. Do you know why that didn't happen? Why are we dealing with legislation instead of a memorandum of understanding between the-- the parties to this dispute?

**KEVIN CLARK:** Actually, I think that's a great question. You hear a lot about the MOU process over the last few years. And I think there's two primary reasons for that. One is simply who's going to be signing the MOUs and who's agreeing to what on both sides of the issue? And the second piece is what actual issue are we trying to resolve through an MOU? So what are you going to put in an MOU? What-- what issue are you trying to resolve? You know, if it's a matter of right to repair, that already exists. You can already repair the equipment. Parts are readily available. Again, we stock tens of thousands of parts. Software codes are available. The diagnostic software is available. A subscription service is available. You can do it through mobile apps.

**LATHROP:** Mr. Clark, where's the-- where's the disconnect? I'm pretty smart guy, listened to a lot of evidence in 40 years of practicing law. And I don't-- these guys say we need some of this-- this code.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

And you say the code's already available. I'm-- I don't know about the other committee members, but I'm missing it.

**KEVIN CLARK:** Well, I think that's the exact reason why there hasn't been the MOU process that everybody's talking about is that, again, what issue are we trying to resolve? When the information's already readily available, what do you put in MOU related to that? And I have indicated personally to Farm Bureau that we're-- we're dedicated to working with them, as well as with the dealers, making sure that if there is an MOU that can be reached, we'd be willing to do so outside the legislative process.

**LATHROP:** Does that happen-- have to happen across the country, that agreement, or can it happen in Nebraska?

**KEVIN CLARK:** I think another great question related to the MOU process is it goes back to which parties are agreeing to an MOU, is that the Nebraska Farm Bureau or the National Farm Bureau? And I certainly think there could be--

**LATHROP:** Can you reach a memorandum of understanding with respect to that would be applicable to Nebraska or does this have to be resolved on a national level?

**KEVIN CLARK:** I think it would be better to be served on a national level to try to get around the scenario we talked about earlier, there's 21 different states that are trying to get legislation around this. If there's a way to do a national MOU between the dealers and associations and customers and National Farm Bureau, I think that would be a better process than trying to legislate it through--

**LATHROP:** OK.

**KEVIN CLARK:** [INAUDIBLE] different states.

**LATHROP:** It's almost always better done on a national level so there's uniformity. But can it be done on a state level? Is that where the-- where the negotiations were taking place and where they failed to reach an agreement? Or was it the negotiations and the failure to reach an agreement, did that happen on a national level?



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**KEVIN CLARK:** My understand there was efforts on both the Nebraska side as well as the national side to try to-- try to accommodate that. I was not involved in all those discussions--

**LATHROP:** OK.

**KEVIN CLARK:** --between the dealers.

**LATHROP:** OK, I appreciate your answers. Anybody else have questions for Mr. Clark? I see none. Thank you for being here today.

**KEVIN CLARK:** Thank you.

**LATHROP:** We're trying to sort it out.

**KEVIN CLARK:** Sure.

**LATHROP:** We do have a farmer on there, but he's the sponsor of the bill. The rest of us are just trying to catch up. We do have two senators that need to be at Exec Board. They are meeting at noon, and so it's not-- they're not leaving because they're no longer interested or they've heard enough.

**SCOTT RABER:** Understood.

**LATHROP:** They have other-- other things to get to.

**SCOTT RABER:** Good morning. Good morning. I think it's still morning. Chairman Lathrop and the committee, thank you for the time this morning. My name is Scott Raber, S-c-o-t-t R-a-b-e-r. I'm with Titan Machinery. We're a Case IH, New Holland, Case Construction dealer representing 16 dealerships across the state; employ around 400 individuals in various small towns across the state. First of all, I guess I would like to say, well, I'd like to thank the farmers in the room. I myself grew up milking 400-- 400 dairy cows every morning for many years of my life. So I appreciate what you do. From our dealership's perspective, it is our goal, and I think of any dealer's mission to be partners with our customers to make their lives easier, not harder. Their success and their satisfaction is critical to our success and our satisfaction, our successes. I have handed out the, I guess, the service tool that is available from Case IH or New Holland

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

that is very recently available for consumers to purchase, whether that be a farmer or an independent repair shop. I, as you, I listened to all this testimony all morning, am somewhat confused. It seems like there's confusion in the marketplace on what is available, what's not available, what a customer does have the ability to do, what a customer does not have the ability to do. And I will say directly to your earlier questions, Chairman Lathrop, I believe that there's a, you know, probably been a poor or a breakdown of communication on what John Deere offers, what CNH offers and has available in the marketplace. If you do look under the electronic diagnostic tool portion of what I handed out, I think it addresses a lot of the concerns and really consternation that many customers have experienced over time. As equipment has evolved, we've all had to learn. I guess we are spending a lot of time talking about equipment that's 10, 15 years old. I can say from our perspective, technology is advancing very quickly. New equipment is not clearly always the answer. But there is a vast and quickly evolving technology advancements that's happening now where we have the ability or the customer has the ability of new machines to repair or see what's happening to them remotely, whether it be from a dealership seat or whether it be from a grower's seat. I guess in closing, it's our opinion and our hope that we are able to-- that we're able to resolve this without further legislation and really address it as a market-based solution. Thank you. And I welcome any questions.

**LATHROP:** OK. Senator McKinney.

**McKINNEY:** Thank you. Is there a limitation on what, well you say, like some machinery is 15 years old or older, do you stop providing information on those type of machinery after a certain time or is it always available?

**SCOTT RABER:** Yeah, I think that-- I think that from an OEM's perspective, there is a-- there's an obligation to provide repair parts and repair information for up to 25 years in that sort, Senator. There clearly is a sunset of that. But generally speaking, the machines that we're talking about, I think would fall in this-- this range of where there would be information available. Now, like I stated earlier, I-- I'll be-- I'll be one to admit, I think that the marketing of and, you know, the distribution of said tools, what

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

you're looking at right here, this is something that has become available to us very recently. I mean, it wasn't available to us three years ago, that sort of thing. So some of this is pretty fresh. I will say that John Deere, with their Service ADVISOR tool, they've had it out there much longer than most manufacturers. And it is quite a robust tool if anybody's had an opportunity to-- to see it.

**McKINNEY:** OK. How-- how often does your company communicate with farmers? I ask this because do they just purchase the equipment and that's the end of the relationship, or is there a continuous communication--

**SCOTT RABER:** It is--

**McKINNEY:** --or emails or outreach or something like that?

**SCOTT RABER:** It is quite rare that we sell somebody something and we have limited to no communication in the future. Most of our-- most of our customers are in our communities. They're repeat customers. They're customers that we have longstanding relationships with. I will tell you, I sit in-- I manage a couple of different stores. But if I were sitting in my office in Fremont, Nebraska, there's maybe one time a day somebody walks in that I don't know who they are, I don't know their first name, I don't know their families.

**McKINNEY:** OK, thank you.

**SCOTT RABER:** You're welcome.

**LATHROP:** Senator DeBoer.

**DeBOER:** There was some testimony-- there was some testimony earlier about security updates being out of date, eight years out of date. Do you know anything about how the security updates are provided for your equipment?

**SCOTT RABER:** I can't speak to, I guess, the-- the level of industry security updates. You know, I do know that there are annual updates for our equipment. There are annual updates for our service tools. There are required updates that we are required to do to machines, basically from an obligation to our manufacturer. To speak to the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

eight years out of date, I don't know that I could speak to that, Senator.

**DeBOER:** How does the annual update process work? Do I have to bring my equipment to you? Do you send someone out to update it? Is it-- how-- how is that process done?

**SCOTT RABER:** Yeah. So generally with equipment that's not of, you know, some of the newer I guess within the last two or three years, we are able to update that equipment remotely or over the air per se. Otherwise, we generally update equipment when it comes in to us for repair. We have a maintenance and inspection program where we probably go through 200 to 300, you know, tractors and combines annually for our customers. They bring them to us for inspection and repair. We will do updates at that time as well.

**DeBOER:** So if I have a piece of equipment and I don't bring it in for repair so that my updating is behind and I would like to get it updated, what does that cost me to go take it in and have you update the software and that sort of thing?

**SCOTT RABER:** So if you've got a piece of machinery that you want updated or you want inspected per se, we offer and many dealerships offer annual inspection programs where we haul your machine in, we do an inspection, we'll do updates, we'll clean it, we'll haul it back to you. And so say like a combine for us, that's \$499. And I assure you, we've got much more than that in hauling machines around, you know, from that side. But I will-- I will say with the EST or customer facing EST that I handed out to there-- there is a tremendous amount of function-- functionality available to a consumer there.

**DeBOER:** So on this newer equipment that is connected either through the cellular service or perhaps someday through the-- the broadband service, I'm on the T&T Committee.

**SCOTT RABER:** That would be great.

**DeBOER:** For those-- for those newer types of equipments that are connected, they can do some of that diagnostic and updating of software.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**SCOTT RABER:** Correct.

**DeBOER:** OK. But it's the older stuff that doesn't quite have that connectivity to it. Those kinds of things have to be brought to-- brought in, in order to get updated. Is that correct?

**SCOTT RABER:** Unless-- unless the customer has a customer facing electronic service tool.

**DeBOER:** And that costs something.

**SCOTT RABER:** Depending on how much of it you need to buy. If you don't have a computer, it's clearly going to cost more than if you do have a computer, anywhere from \$3,000 to \$5,000.

**DeBOER:** OK, all right. Thank you.

**SCOTT RABER:** You're welcome.

**LATHROP:** Thanks for being here.

**SCOTT RABER:** Thank you.

**LATHROP:** We're going to take one more opponent, then go to neutral testimony, if any. Good afternoon.

**MARK HENNESSEY:** Good afternoon, Mr. Chairman, members of the committee, it's a pleasure to be here today. My name is Mark Hennessey, M-a-r-k H-e-n-n-e-s-s-e-y. I'm the president and CEO of the Iowa Nebraska Equipment Dealers Association, and you've heard from two of our members of our association here today. I think what we are all in this room trying to accomplish is the same thing. We don't want to have a producer unable to be able to operate their equipment in the field. We want them to be able to harvest. We want them to be able to plant. And if they want to be able to repair their equipment, we want to be able to support that repair. We're all after the same objective. The question you raised earlier, Senator, was aren't they aware that they can already do this? I think when you hear and you heard about the products that are currently available in the market today, producers can buy diagnostic tools, equipment software subscriptions, much the same as an independent repair or a dealer themselves procure.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

This is available for them to be able to do themselves if they so wish. The question becomes, why aren't they doing it? Well, they can if they desire. It really does boil down to an awareness issue. Are they aware that these tools exist? Why are we needing to have legislation for something that's currently on the market today? So I think the crux of the matter to crystallize it is how do we create better awareness? Do we do that through legislation or do that through communication? What's the best way we can accomplish this objective? Because we all are after the same thing. And that's trying to make sure that our producers in Nebraska can be able to plant 24/7 or whatever schedule they want to be able to get their crop in the field or harvest on time. That's what our producers want to have. That's what our dealers are striving for. That's what the OEMs have been able to provide those tools and diagnostic capabilities for all of us to be able to do. So I just want to close that we're all after the same objective. We don't believe we need to have legislation to accomplish the ability to right to repair because the products are available on the market today. We don't need to have legislation to create awareness. That's a challenge that we have to do and we have to do a better job of. But that's where we'd really like to be able to step up and make sure that we are looking at this bill from the lens of are we doing the right thing? And if we can improve, we certainly are open to that. We don't think legislation is needed in order to get that accomplished.

**LATHROP:** So if this passes, tell me what harm there is.

**MARK HENNESSEY:** If--

**LATHROP:** I mean, I'm not-- believe me, if you were here earlier in the week or last week, you-- you'd understand that I'm not in favor of passing bills based on fear of something that doesn't exist. On the other hand, if this passed, tell me what it would do to your industry, because it sounds-- this is the struggle I'm having. I don't know about the others on the-- on the committee, but the equipment dealers are saying this isn't a problem. This is a solution looking for a problem because we're already giving them everything they need. And I suspect Senator Brandt will have a little rebuttal opportunity, may have a different point of view. But before you get out of that chair, I'm going to ask you if this passed, what's the harm?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**MARK HENNESSEY:** I believe--

**LATHROP:** What-- what are we going to-- what are we going to do that you think is a bad thing if you're already-- if all we're doing is memorializing current practice?

**MARK HENNESSEY:** Yeah, well, I guess my-- to answer your question, enacting legislation for the purposes of doing something we currently are doing today isn't legislation that's really truly needed because we don't know where the future of legislation could go. We don't know how it could be amended or changed or modified going forward. And so there's always a question about where could this lead us? Is this really the intended purpose of this legislation to begin with? Do we want to pass laws that really are laws we're currently doing today? What purpose do they truly serve?

**LATHROP:** So you don't think this would require you to do anything or provide anything to the ag producer that you're not already providing?

**MARK HENNESSEY:** That's correct.

**LATHROP:** OK. Well, I got a question for Senator Brandt when he sits down. Senator McKinney.

**McKINNEY:** Thank you. So are you saying that this shouldn't become law because in the future, the circumstances of your relationship with farmers might change?

**MARK HENNESSEY:** I can't hear, sorry.

**McKINNEY:** So are you saying that you're opposing this legislation because some years down the line, the nature of your relationship with farmers might change? And if this is in law and say you stop providing these services, something can be amended to force you to do something more than you're not doing or? I don't know if I'm saying it clear. So basically what I'm trying to access, if not in law, some years down the line, you could potentially stop providing all these services and there's no legal really reme-- ramifications for farmers to look at to hold you accountable. But if it's in law, if you stop providing these services, you will be held accountable.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**MARK HENNESSEY:** Yeah, I think to answer your question, don't believe we need to have a law for something that currently is in place. There's a lot of things that we do in our daily lives that there's not laws for. We just do. We just live. And so it would be for our dealers to not be able to support the producers, that's-- that's not the business that they're in. They want to make sure that those producers can plant the field and whatever they can possibly do to assure that's going to happen, they do. And they take a great deal of pride in doing that. So to answer your question about I don't-- I don't believe we need to have a law for something that currently is in place. They can buy the products. They can repair those products if they show-- so desire or they can choose to have an independent repair shop do it or bring it into the dealership. Whatever they choose to do, it's already there.

**McKINNEY:** Is there a plan to work on improving the relationship with farmers? Because I don't believe that Senator Brandt would have brought this legislation if it wasn't an issue. So do you already have a plan in place to improve your relationship with farmers to ensure that their needs are being met?

**MARK HENNESSEY:** We-- we are constantly looking to improve. I mean, I think you heard some conversation about at the national level, could we see an MOU with the American Farm Bureau? We are currently and constantly looking for ways that we can improve the delivery of services. I'm sure there's always opportunities to continue to-- to grow in that respect. But like I said at the beginning of my remarks, we're all after the same thing. We are all after wanting to make sure that the producer get in the field. Ideally, it would be great to have a cell service that's accessible everywhere in Nebraska and so we don't have some of these-- these-- these gaps in coverage and that's being worked on today. And I think being able to have remote access to equipment is something we're going to see going forward and allowing for, whether it's independent or a dealer or whoever to-- to be able to support that remotely, I think we'll see that. But it's not here today due to some of the communication gaps that we're seeing, but it's going to continue to evolve.

**McKINNEY:** All right. Thank you.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**LATHROP:** OK. I don't see any other questions. Thanks for being here. We appreciate hearing from you. That will close the opponent testimony. Is anybody here in a neutral capacity? Seeing none, Senator Brandt, you may close on LB543. As you approach the record, I will complete the record by noting that we have five position letters, all five are proponents. We also have written testimony: a proponent, Edison McDonald from GC Resolve; and in opposition, the Nebraska State Chamber, Kristen Hassebrook. Senator Brandt.

**BRANDT:** First of all, I want to thank everybody that testified today. What's unusual in the farming community is that we really rely on our dealers. We wouldn't be in business without these guys. And so I think they realize this is not a poke at them. We're trying to work together on this to get this-- to get this resolved. There were some good points made, distance to dealerships. Senator Brewer is a cosponsor on this bill. When you're up in the Sandhills, you may live hour, hour and a half from a dealership. And if you've got somebody local that can diagnose this, that helps tremendously. A little different than consumers where you can go down to NAPA and you can buy a scanner for your car. I can tell you myself, as just a moderate or small farmer, I own 10 tractors and a sprayer and a combine. We own a lot of equipment. So this affects us in a big way, especially when you realize that 92 percent of the geographic footprint of the state of Nebraska is farm. This bill is not about the right to modify. People do that today without this bill. This bill is about the right to repair. It has nothing to do with emissions. You cannot modify emissions. That's against federal law. This is about right to repair. Senator DeBoer, on parts, a customer must buy those parts for the most part from an authorized dealer. There's some-- some equipment out there where there's third-party dealers. But by and large, that's how the-- the ag network works. Whether this bill would pass or would not pass, these dealers are going to sell the same amount of parts this year as they did last year, because that's where we've got to get our parts from. Senator McKinney had a question on liability on modification. That's pretty much on the guy that did the modification. Now, if-- if a dealer misses it on a trade-in and it's traded in, that dealer would have to bring that piece of equipment back to manufacturer specifications. And then it becomes an issue between the dealer and that customer about who would pay for that. And they would

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

get a good attorney like those present in this room here today. So I think that's about all the points. I think Senator DeBoer brought up the Internet issue. A lot of the modern equipment automatically downloads, providing you have an Internet connection. And next year that's going to lead to some other things that we're working on.

**LATHROP:** Wrong committee.

**BRANDT:** What?

**LATHROP:** Wrong committee.

**BRANDT:** Wrong committee, T&T. So I guess we need to ask ourselves, would these farmers have driven here today if this was not an issue? Really? I mean, we've-- we've all got better things to do than appear before the Judiciary Committee as much as you guys enjoy listening to farmers. But I can tell you, they probably would not have shown up today if they didn't feel strongly about this. So what would a reasonable person do? You know, they talk about not needing this law. Nebraska has over 40,000 statutes. We don't need any of them if everybody didn't break the law. Why do we have a speed limit? I drive the speed limit. You drive the speed limit. We have a law because maybe she doesn't drive the speed limit. So I guess that's sort of how I view the world right now. And I would be happy to take any questions from the committee.

**LATHROP:** So I want to ask you a follow-up to the-- the last testifier. If-- what is it, because we had every person that is opposed to this bill say that the code is available, just go on the website. Look in the owner's manual. If you got an error code and it says your engine isn't running because of code number B25, there's a place to find out what that is. So do you disagree with them? Is there something you want that isn't publicly available already?

**BRANDT:** OK, using--

**LATHROP:** What will you get out of this bill--

**BRANDT:** OK. Using--

**LATHROP:** --that you're not getting already?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**BRANDT:** First of all to the-- to the code question. My personal experience as a farmer, I have owned multiple lines of equipment and there are multiple levels of operator's manual. Some are very, very good. Some of them actually have in the operator's manuals the codes and what they are. A lot of these codes, like one of the testifiers said, is call the dealership. And it seems like the newer the equipment that tends to be more of what we see. We don't get that granular definition that said, it is the third fuel filter on your combine that's causing you the problem. And yet the computer system is good enough to tell you that it's the third fuel filter on the combine, but that information isn't getting back to the owner of the machine. So, yeah, there's a lot of frustration here on the part of owners, farmers, independent mechanics. So that's-- that's somewhat with the codes. So, yeah, Case IH has a different system than John Deere, than AGCO, than Cat and-- and those are just the major ones. There's thousands of original equipment manufacturers and they're all different. And now we're talking about robotic milking machines. We're talking about telemetry. We're talking about center-pivots. I mean, people go down the road. In agriculture, it's IOT, the Internet of things. Yeah. We only have a farmer every three or four miles. But to get between those farm places with connectivity, you may have driven past 20 pivots that are all connected or-- or tractors or combines or swathers or sprayers. So there's a very high degree of technology out in rural Nebraska that the owners would like to see access to.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So you said that there are the codes, right? Let's talk about the codes again. You said that there are potentially codes. Sometimes they say call the manufacturer. They say, eh, that's not really the case anymore. So sure. I mean--

**BRANDT:** Maybe, OK, maybe an easier way to explain this is that there's Android phones and there's Apple phones or computers and they all are a little bit different.

**DeBOER:** Sure.

**BRANDT:** It's the same with original equipment manufacturers and codes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

**DeBOER:** Sure.

**BRANDT:** They're all a little bit different.

**DeBOER:** Sure.

**BRANDT:** So John Deere, how they define code and what that customer does in Case IH and AGCO, in Valley and go on down the list of this is all a little bit different in what they define and what their processes are.

**DeBOER:** So how is-- how does this bill help that? Because what I hear is there's an overwhelming complexity of ways to access information about what that code means.

**BRANDT:** This bill simply is somewhat a bill of rights for the owner that says you have a right to access that code from that original equipment manufacturer if they still provide it for those machines. Now, if I have a 20-year-old machine and they've discontinued support for that machine, and I-- and I have some equipment like that, there is no obligation on their part to supply that.

**DeBOER:** So-- but if it's a bill of rights that you have the right to access that code or what that code means and the manufacturers are saying we already provide that information, albeit on these various platforms that are perhaps difficult to navigate, how does this bill help make that navigation process easier?

**BRANDT:** Well, I don't think it makes the navigation process easier. But let's say everybody, all the manufacturers in this room are the good ones. It's like every other bill we hear. It's the ones we need to address that aren't here. So if you have 10 or 15 percent out there, that's what the bill will address. This bill really won't affect the good actors. It's like most of the bills we hear. This just-- just puts a template in place that everybody knows what the rules are.

**DeBOER:** OK, that helps, thanks.

**LATHROP:** OK. Senator Brandt, interesting morning.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 25, 2021  
LB543  
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19  
Response protocol

**BRANDT:** Yes, it was. Thank you.

**LATHROP:** We appreciate everybody that showed up today, both opponents and proponents, gives us a lot to think about. And thanks for being here, taking the time to enlighten the committee and share your point of view. That will close our hearing on LB543 and our hearings for this morning. We will be back at 1:30.